

OPINION
58-138

November 5, 1958 (OPINION)

INSANE, FEEBLEMINDED, ETC.

RE: Proposed Site for Blind School - Acquisition of Title

Re: Proposed Site for Blind School, Grand Forks, North Dakota

In reference to your letter of October 17, 1958, you state that the Board of Administration desires a larger site for the location of the School for the Blind at Grand Forks, North Dakota. The letter of Shaft, Benson and Shaft, Attorneys at Law, which you have attached to your letter, states that the proposed site is part of a tract of land (N.E. \ of Section 5 Township 151 Range 50, Grand Forks County, North Dakota) devised by Judge H. A. Bronson to the University of North Dakota in fee, subject to a life estate in the net rents and profits in his wife and daughter, both of whom are still living.

The specific provision of the will we are concerned with is paragraph 8; it provides:

In recognition of the education afforded me by my Alma Mater I devise the Northeast Quarter of Section 5 of Grand Forks Township, Township 151 North of Range 50 in Grand Forks County, North Dakota, to the University of North Dakota in fee so long as it be and remains a University at Grand Forks, North Dakota, subject however to a life estate in the net rents and profits to my wife Alice and my daughter Clementine during their respective lives, to be administered during its continuance by my executors or their successors, and payments made annually to the life tenants as follows: All to my wife during her lifetime, otherwise to my daughter Clementine."

You ask the following questions:

Can the Board of Administration accept title or lease, as may be available, from the two living heirs and their executors in order to construct the Blind School upon said property referred to throughout Attorney Shaft's letter?"

Secondly, can the University of North Dakota officials or Board of Higher Education, once they become the beneficiary of the contents of the 'Will,' be in a legal position to grant further rights and benefits to the Board of Administration for the use and benefit of the Blind School?"

The provision of the will quoted above grants fee title to the University of North Dakota subject to a life estate in some real property interest in the wife and daughter or possible to a life estate pur autre vie in executors as trustees. Because of these possibilities, it would be advisable to have the executors secure a court order permitting them to convey the interest of the wife and daughter (unless a power of sale in the executors is contained

elsewhere in the will) and then secure quit claim deeds from the executors, from Mrs. Bronson, the wife, and from Mrs. Johnson, the daughter, of the testator.

A quit claim deed executed by the Board of Higher Education and the Board of University and School Lands would also be advisable. See North Dakota Constitution, sections 156, 159, 160; section 15-0102 and chapter 15-07 of the N.D.R.C. of 1943, referring to the Board of University and School Lands, and section 15-1012 of the N.D.R.C. of 1943, referring to the Board of Higher Education. The testator in the will devised the land in fee, subject to the life estate; therefore, these two boards are in a position to execute such quit claim deeds immediately.

It is the opinion of this office that a court order permitting the executors to convey the life the life estate, a quit claim deed from the executors, from Mrs. Bronson and Mrs. Johnson, the testator's wife and daughter mentioned in the will, and quit claim deeds from the Board of Higher Education and the Board of University and School Lands, would provide adequate title to that portion of the Northeast Quarter of Section 5 in Grand Forks Township, Township 151 North of Range 50 in Grand Forks County, North Dakota, desired by the Board of Administration as a site for the proposed State School for the Blind.

LESLIE R. BURGUM

Attorney General